

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.141.401) ON PROPOSED AMENDMENT
pertaining to board meetings,)
ARM 24.141.402 pertaining to)
apprentice registration,)
ARM 24.141.405 pertaining to fee)
schedule, ARM 24.141.502 pertaining)
to temporary practice permits, and)
ARM 24.141.503 pertaining to)
examinations)

TO: All Concerned Persons

1. On August 11, 2005, at 9:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. George Edwards no later than 5:00 p.m., August 4, 2005, to advise us of the nature of the accommodation you need. Please contact Mr. George Edwards, State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; Facsimile (406) 841-2309; e-mail dlibsdele@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.141.401 BOARD MEETINGS (1) remains the same.

(2) Special meetings or conference calls of the board shall be held at the call of the ~~chairman~~ president of the board, ~~no prior notice of same required.~~

(3) remains the same.

AUTH: 37-68-201, MCA

IMP: 37-68-201, MCA

REASON: An administrative rule change is needed to correct language in the rule clarifying the title of the board president. 37-68-201, MCA identifies the titles of the officers of the board. Meetings held by the board will be subject to open meetings laws and rules and will receive prior public notice.

24.141.402 APPRENTICE REGISTRATION (1) and (2) remain the same.

(3) In order to be recognized by the board as an apprentice, an applicant shall either:

(a) present evidence of enrollment in an apprentice training program registered by the apprenticeship bureau and training program, department of labor and industry, state of Montana; or

(b) present evidence directly to the board of the individual's enrollment in an apprentice training program which is equivalent to programs of the Montana department of labor and industry.

~~(4) For purposes of determining whether a program is equivalent within the meaning of (3)(b) above, the board will consider and apply the current apprenticeship bureau standards. If the applicant employer's proposed program meets or exceeds the apprenticeship bureau's program then equivalency will be determined to have been met. In determining whether a proposed program meets or exceeds the apprenticeship bureau standards, the board will consider all factors used by the apprenticeship bureau. Interpretation of existence of these standards will be made with an overall expectation that proper safety standards for the apprentice are met and that the consumer is receiving proper and adequate electrical installation services from the apprentice and the apprentice's employer.~~

~~(5) With respect to the apprenticeship programs established directly through the board, the board reserves the right to monitor said programs and to demand and receive any and all necessary progress reports from the approved program.~~

~~(6) Compliance with federal and state law administered by the department of labor and industry, labor standards division, apprenticeship bureau, where such compliance is applicable shall be a condition to registering apprentices with the state electrical board.~~

AUTH: 37-68-201, MCA
IMP: 37-68-303, MCA

REASON: The Apprenticeship and Training Program is requesting that the State Electrical Board entertain these proposed rule changes in removing ineffective rules and designate the Apprenticeship and Training Program, Montana Department of Labor and Industry, as the primary entity for electrical apprentice purposes under their rules. Please note the following:

1. ARM 24.141.402 became effective September 12, 1980 with prior recognized registration authority of the apprenticeship and training program, but a Montana contractor has never used the rule. Although the rule offers a choice for apprenticeship recognition, it is in conflict with the norms currently and historically utilized by the Montana electrical industry for apprenticeship registration.

2. Board recognized apprentices would not qualify for payroll certification of apprentice wages on State Prevailing Wage projects and Federal Davis-Bacon predetermined wage projects. Also, board recognized workers would not be eligible for veteran's training benefits. Contractors would be required to pay the full journeyman worker wage and benefit package to board registered apprentices on those projects.

Board approved apprenticeship programs for Montana employers would be a duplication of the functional, statutory Apprenticeship and Training Program already existing. In 2004, the Apprenticeship and Training Program registered 179 combined inside and residential electrician apprentices for Montana electrical sponsors. In 2004, the program conducted an estimated 275 compliance related visits to registered electrical sponsors, with these visits encompassing wage compliance, required related instruction progress and providing technical program information. Furthermore, since January 1, 2002, the Apprenticeship and Training Program has graduated/completed 197 electrical apprentices to journey level status.

Currently the Apprenticeship and Training Program has over 375 electrical apprentices registered with an estimated 200 Montana electrical employers, and has the necessary technical expertise to manage those programs in compliance with applicable state and federal laws.

ARM 24.141.402 does allow for dual apprenticeship recognition, but any form of program services, without the necessary staffing that could be offered by the board, would be considered questionable in quality of program services. The current rule may allow a less than standard apprenticeship to exist within the Montana electrical community, which could also allow less than acceptable program performance. Given the fact that program performance has a direct tie to successfully passing the electrical journeymen's exam, a board driven apprenticeship, without oversight and administrative support, could fall short in providing the Montana electrical industry competent and well trained journeymen.

24.141.405 FEE SCHEDULE (1) Examination fees are set by the testing agency and vary by examination. Contact the board office for a current schedule of test section fees. Fees are to be paid directly to the testing agency upon the board's approval of an application.

(a) <u>Examination review fee</u>	<u>\$100</u>
(b) <u>Examination administered by the board</u>	<u>200</u>
(2) through (9) remain the same.	

AUTH: 37-1-134, 37-68-201, MCA
IMP: 37-1-134, 37-1-304, 37-1-305, 37-68-304, 37-68-307, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: An administrative rule change will be needed to allow for an exam review and a paper and pencil exam to be administered by department personnel. Exam candidates were unable to obtain an exam review in a timely manner. Individuals requesting a review would not be able to participate in a review until the next exam was conducted four months later. Exam candidates would then have to wait an additional four months before being allowed to re-exam with the vendor. The current exam vendor does not conduct exam reviews. Department personnel will be conducting the review, which will allow for the individual to retake the exam in a timely manner. Because of difficulty in obtaining an exam review with the former vendor, exam reviews have not been taking place.

351 examinations were given during 2004. Of the 351 examinations given, 232 individuals could have requested an exam review. No exam reviews were conducted during 2004. The State Electrical Board was given an exam question database from the State of Washington, which the board is now using. Currently, the State of Washington has not conducted an exam review using the questions in the database. Exam review fees will only impact applicants who have failed an exam and have requested a review.

A fee is needed to cover the board expense for staff time to prepare and conduct examination reviews. With a new exam process, potentially five individuals or less will request a review with the department.

The former exam vendor would provide a reader for individuals requiring ADA considerations. Department staff will now be conducting exams requiring a reader. A fee is needed to cover the board expense for staff time to prepare and conduct an exam administered by department staff. Less than two examinations per year have required a reader for exams in the past three years.

24.141.502 TEMPORARY PRACTICE PERMIT (1) and (2) remain the same.

(3) A temporary practice permit issued to an applicant for an electrician license shall expire 90 days from the date of issuance or upon receipt of licensure examination results. ~~on the date the next scheduled licensure examination results are received or in the case of licensure by reciprocity or endorsement, on the date that notice is received of the board's decision.~~

(4) through (6) remain the same.

(7) If the applicant does not register for the ~~next~~ scheduled examination within 90 days, the second temporary practice permit shall expires ~~on the date the board office is notified by the testing agency of the registration of the applicants.~~

AUTH: 37-1-319, 37-68-201, MCA
IMP: 37-1-305, MCA

REASON: An administrative rule change is needed to specify a time period for a temporary practice permit to be valid. Past examinations were only available four times per year, and temporary practice permits were valid anywhere from one to six months. Examinations will now be available on a weekly and possibly daily basis. Because of the availability of examinations, a time frame for temporary practice permits must be established.

24.141.503 EXAMINATIONS (1) through (4) remain the same.

(5) All examinations are open book.

(a) Candidates may only use:

(i) an NEC code book applicable to the examination being given (tabs or indexes may be used in the book);

(ii) a silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations; and

(iii) copies of the Montana statutes and rules relating to electricians.

(6) An applicant for an examination who, due to a specific physical, mental, or sensory impairment, requires special accommodation in examination procedures must submit a written request to the board office for the specific accommodation needed.

(7) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

(8) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the board office and received within 20 days of the date of the examination and must request a rescore of the examination.

(b) The following procedures apply to review of the results of the examination:

(i) The candidate will be allowed two hours to review the examination.

(ii) The candidate must identify the challenged questions of the examination and must state specific reasons why the results should be modified with the NEC code book and/or Montana statutes and rules supporting the candidates position.

(iii) Within 15 days of the candidate's review, the department will review the examination and candidate's justification and notify the candidate in writing of the department's decision.

(9) Anyone determined by the board to be cheating on an examination or using inappropriate material/equipment during an examination will fail and be required to wait at least one year and reapply for licensure before being allowed to reexamine. All such reexaminations will be administered by the department in Helena, Montana, require a written examination fee, and the candidate will be required to apply and schedule the examination with the board office.

(10) Examination appeals must be submitted and reviewed by the full board at its next regularly scheduled meeting.

AUTH: 37-1-131, 37-68-201, MCA

IMP: 37-68-201, 37-68-304, 37-68-305, MCA

REASON: All aspects of electrician examinations were previously contracted out to a third party exam vendor. In order to implement changes to allow more frequent exam availability, the board is using a new third party vendor. This vendor will only proctor an examination. The board is establishing rules to establish a procedure for examinations to benefit exam candidates who had previously had difficulty obtaining examination reviews and appeals.

To clearly identify what an exam candidate is allowed to bring into an exam site, the board identified specific books and types of calculators allowed into an exam site.

One incidence of cheating on an exam was reported to the board in 2004. A procedure is needed to establish consequences for individuals found to be cheating or using inappropriate materials during an examination.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Mr. George Edwards, State Electrical Board, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdele@mt.gov and must be received no later than 5:00 p.m., August 19, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's web site on the World Wide Web at <http://www.electrician.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a

person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The State Electrical Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all State Electrical Board administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdele@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor requirements of 2-4-302, MCA do not apply.

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State July 1, 2005